

**UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT  
OF PENNSYLVANIA**

CITIZENS COAL COUNCIL )  
                            )  
                            )  
Plaintiff,               )     No. \_\_\_\_\_  
                            )  
                            )  
vs.                        )  
                            )  
EMERALD COAL RESOURCES, LP, )     **FOR INJUNCTIVE AND  
FOUNDATION COAL CORPORATION, )     **DECLARATORY RELIEF  
and ALPHA NATURAL RESOURCES, )     **AND CIVIL PENALTIES  
Inc.                      )  
                            )  
Defendants.              )******

**COMPLAINT**

**I. NATURE OF THE ACTION**

1. This is a citizen's action for declaratory and injunctive relief and for the imposition of civil penalties under the Federal Water Pollution Control Act ("Clean Water Act"), 33 U.S.C. § 1251 *et seq.* The claims arise as a result of the Defendants' repeated discharge of pollutants in excess of effluent limitations imposed on Emerald Coal Resources, L.P. and its corporate parents Foundation Coal Corporation and Alpha Natural Resources, Inc. by the Clean Water Act and its National Pollution Discharge Elimination System ("NPDES") permit PA0213438 at its Franklin Township, Greene County longwall coal mine located at 158 Portal Road, Waynesburg, PA 15370. These discharges adversely affect and cause environmental harm to the navigable waters of the United States, and have injured and continue to injure the property, recreational, aesthetic, and health interests of Citizens Coal Council's members.

## **II. JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction over the claims enumerated in this Complaint pursuant to 33 U.S.C. § 1365(a)(1)(A) (Clean Water Act) and 28 U.S.C. § 1331 (federal question). The relief requested is authorized pursuant to the Clean Water Act, 33 U.S.C. §§ 1319, 1365 and 28 U.S.C. §§ 2201 and 2202.

3. In compliance with section 505(b) of the Clean Water Act, 33 U.S.C. § 1365(b), Plaintiffs provided the Administrator of the United States Environmental Protection Agency (“EPA”), the Regional Administrator of Region III for the EPA, the Governor of Pennsylvania, the Secretary for the Pennsylvania Department of Environmental Protection (“DEP”), the Deputy Secretary of Water Management for DEP, and the Defendants with notice of intent to sue by letter dated October 29, 2012 (the “Notice”), sent by certified mail return receipt requested. A copy of the Notice is attached to this Complaint as Exhibit “A”.

4. More than sixty days have passed since the Notice was served, and the violations addressed in the Notice are ongoing. Defendants’ discharges cause environmental harm to the receiving waters, various creeks and unnamed tributaries of the South Fork Ten Mile Watershed and the Whitely Creek Watershed, both of which drain to the Monongahela River, on an ongoing basis. Neither the EPA nor DEP has commenced a court action to redress these violations.

5. The Defendants’ facilities that are the source of the discharge and violations are located in this District. Therefore, venue in the Western District of Pennsylvania is proper pursuant to 33 U.S.C. § 1365(c) and 28 U.S.C. §§ 1391(b)-(c).

### **III. PARTIES AND STANDING**

#### **Plaintiff:**

6. Plaintiff Citizens Coal Council (hereinafter “CCC”) is a national federation of grassroots groups and individuals dedicated solely to challenging and changing the practices of the coal industry to protect both people and the environment. CCC is a Pennsylvania non-profit corporation, designated as 501(c)(3). CCC maintains a principal place of business at 605 Taylor Way, Bridgeville, PA 15017.

7. CCC’s members own property astride certain waters receiving Defendants’ effluent and / or have used, continue to use and will in the future use the receiving waterways for various forms of recreation and aesthetic enjoyment.

8. Defendants’ illegal discharges of mine wastewater and stormwater runoff into the creeks and unnamed tributaries of the South Fork Ten Mile and Whitely Creek watersheds have caused high levels of inorganic chemical effluents that add stress to the water's ecosystem and can cause loss of critical biota, fish advisories, fish kills, and leave the water unhealthy for wading, fishing, or engaging in other forms of contact recreation. Defendants’ illegal discharges have degraded and continue to degrade the quality of these waters, and thereby adversely affect the recreational, aesthetic, environmental, property, and other interests of the members of Citizens Coal Council. The interests of the members of CCC have been, and will continue to be affected by the Defendant’s failure to comply with the Clean Water Act.

9. The interests Citizens Coal Council seeks to protect are germane to the organization’s purpose.

10. Neither the claims asserted, nor the relief requested, require the participation of the individual members of Citizens Coal Council in this lawsuit.

11. Citizens Coal Council is a citizen as defined in section 505(g) of the Clean Water Act, 33 U.S.C. § 1365(g).

Defendants:

12. Defendant Emerald Coal Resources, LP. (hereinafter “Emerald”) is a limited partnership established in Pennsylvania by Defendants Foundation Coal and / or Alpha Natural Resources, Inc. or their subsidiaries to operate and hold environmental permits for the Emerald Coal Mine No. 1 and its preparation plant, mine discharge sedimentation ponds and basins, and other facilities that discharge wastewaters into the aforementioned waters of the United States. Emerald maintains offices at 2071 Garards Fort Road, Waynesburg, PA 15370.

13. Defendant Foundation Coal Corporation (hereinafter “Foundation”) is a Delaware Corporation which in 2004 acquired the Emerald Mine No. 1 and renamed RAG Emerald Resources, LP to Emerald Coal Resources, LP. Foundation maintains its principal offices at 999 Corporate Blvd., Suite 300, Linthicum Heights, MD 21090.

14. Defendant Alpha Natural Resources, Inc. is a Delaware Corporation, and is the product of a merger between Alpha and Foundation in 2009. By virtue of the merger, Alpha is the owner of the Emerald Mine No. 1. Alpha maintains its principal offices at One Alpha Place, Abingdon, VA 24212.

15. Defendants are persons as defined in section 502(5) of the Clean Water Act, 33 U.S.C. § 1362(5).

16. Defendants’ violations of the Clean Water Act allow this Court to impose injunctive relief and assess civil penalties pursuant to sections 301 and 309 of the Clean Water Act, 33 U.S.C. §§ 1311 and 1319.

17. Without the issuance of injunctive relief and the assessment of civil penalties, Defendants will continue to degrade the quality of the creeks and tributaries of South Fork Ten Mile and Whitely Creek watersheds and cause further injury to the Plaintiff and the environment.

18. The issuance of injunctive relief and imposition of civil penalties is likely to encourage Defendants to discontinue their current violations and deter them from committing future ones; thereby redressing the injuries caused by Defendants' violations.

#### **FACTUAL AND LEGAL BACKGROUND**

19. In 1972, Congress enacted the Clean Water Act to "restore and maintain the chemical, physical and biological integrity of the Nation's water." 33 U.S.C. §1251(a). The CWA purpose is to attain water quality which "provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water." 33 U.S.C. § 1251(a)(2).

20. Except as in compliance with a NPDES permit "the discharge of any pollutant by any person shall be unlawful." 33 U.S.C. §1311(a). The term "discharge of a pollutant" means "any addition of any pollutant to navigable waters from any point source." 33 U.S.C. § 1362(12).

21. The term pollutant means "dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water." 33 U.S.C. §1362(6).

22. On July 9, 1986, the Commonwealth of Pennsylvania issued Bituminous Coal Mining Activity Permit 30841307 for the Emerald Mine No. 1, which under the Pennsylvania Department of Environmental Protection's permitting process included a NPDES permit. The

included NPDES permit PA0213438 for Emerald Mine was issued by DEP under the delegated authority of Section 402 of the Act, 33 U.S.C. § 1342, to the Defendants' predecessor, for the discharge of pollutants from its facility located in Franklin Township in Greene County Pennsylvania.

23. By its own terms the permit was last renewed on March 6, 2002 and expired on July 9, 2006.

24. On information and belief, the NPDES permit was transferred to Defendant Emerald Coal Resources, LP at or about the time of acquisition of Emerald Mine No. 1 from the predecessor owner.

25. On information and belief, Defendant Emerald Coal Resources, LP submitted a renewal application in 2006 but is still operating under its expired permit and violating that permit.

26. The effluent discharges from the Emerald facility flow directly from pond discharge outfalls into certain creeks and tributaries which flow to the Monongahela River. Specifically, with regard to outfalls for which violations are alleged in this Complaint: Outfall 001 discharges to Unnamed Tributary to Smith Creek, which is designated as a Warm Water Fishery (WWF) and is a 303(d) impaired water; Outfall 002 discharges to South Fork Tenmile Creek, which is designated High Quality WWF; Both Outfall 004 and Outfall 006 discharge to Unnamed Tributary to Smith Creek, which is designated WWF and is a 303(d) impaired water; Outfall 009 discharges to Smith Creek, which is designated WWF and is a 303(d) impaired water; Outfall 012 discharges to Unnamed Tributary to Laurel Run, which is designated WWF; Outfall 013 discharges to Unnamed Tributary to Coal Lick Run, which is designated WWF, and is a 303(d) impaired water; Both Outfall 014 and Outfall 015 discharge to Unnamed Tributary to

Dyers Fork which is designated a Trout Stocking Fishery (TSF) and is a 303(d) impaired water; Outfall 016 discharges to Unnamed Tributary to Frosty Run, which is designated TSF; Outfall 017 discharges to Grimes Run, which is designated WWF and is a 303(d) impaired water.

## COUNT I

### **VIOLATIONS OF THE CLEAN WATER ACT (33 U.S.C. §1311(a)):** **DISCHARGES OF POLLUTANTS IN EXCESS** **OF NPDES PERMIT PA0213438**

27. Paragraphs 1-26 are incorporated by reference herein.

#### **Aluminum Violations**

28. The 2002 NPDES permit contains Aluminum average monthly concentration limitations of 0.5, 0.7, 0.8, or 1.7 mg/l, depending upon the outfall. The maximum monthly concentration of Aluminum in the Permit for outfalls at which a violation was found was 1.4 mg/l or 1.0 mg/l, depending upon the outfall. Excessive Aluminum in the receiving stream can cause adverse impacts upon aquatic life and/or may degrade a stream's existing use. Emerald violated effluent limitations on the following dates:

Aluminum Violation Date	Monthly Allowed Average Concentration (mg/l)	Sample Concentration	Outfall/Discharge Point
01/01/08-01/31/08	0.7	1.17	002
01/01/10-01/31/10	0.7	0.8	002
03/01/10-03/31/10	0.7	No Data	002
04/01/10-04/30/10	0.7	No Data	002
05/01/10-05/31/10	0.7	No Data	002
12/01/10-12/31/10	0.7	1.1	002
05/01/12- 05/31/12	0.8	1.1	006
07/01/12-07/31/12	0.8	14.3	006

12/01/10-12/31/10	0.5	0.7	013
01/01/08-01/31/08	1.7	1.91	014
07/01/12-07/31/12	1.7	9.9	014
09/01/12-09/30/12	1.7	1.8	014
11/01/11-11/30/11	0.5	0.8	015
12/01/11-12/31/11	0.5	0.7	015
01/01/12-01/31/12	0.5	0.6	015
02/01/12-02/29/12	0.5	0.6	015
03/01/12-03/31/12	0.5	3.4	015
07/01/10-07/31/10	0.5	0.6	016
04/01/11-04/30/11	0.5	0.7	016
12/01/11-12/31/11	0.5	0.6	016
Aluminum Violation Date	Daily Maximum Concentration	Sample Measurement Concentration	Outfall/Discharge Point
01/01/08-01/31/08	1.4	2.16	002
10/01/09-10/31/09	1.4	1.9	002
07/01/12	1.6	37.26	006
07/02/12	1.6	5.043	006
07/26/12	3.4	9.866	014
03/01/12-03/31/12	1.0	5.7	015
12/01/11-12/31/11	1.0	1.1	016

Defendants' violations of the Aluminum effluent limitations are likely to continue to occur.

#### **Total Iron (mg/l) Violations**

29. The 2002 NPDES permit contains Total Iron average monthly concentration limitations of 1.5, 2, 2.1, or 3 mg/l, depending upon the outfall. The maximum monthly concentrations of Total Iron in the Permit are 3, 4, 4.2, 6, or 7 mg/l, depending upon the outfall. Excessive Iron in the receiving stream can cause adverse impacts upon aquatic life and/or may degrade a stream's existing use. Emerald violated effluent limitations on the following dates:

Iron Violation Date	Monthly Average Allowed Concentration	Sample Concentration	Outfall/Discharge Point
01/01/08-01/31/08	2	2.53	002
01/01/10-01/31/10	2	2.3	002
02/01/10-02/28/10	2	2.8	002

08/01/10-08/31/10	3	6.6	001
05/01/12-05/31/12	2.1	3.2	006
06/01/12-06/30/12	2.1	6.5	006
07/01/12-07/31/12	2.1	38.4	006
07/01/12-07/31/12	3	10.3	014
03/01/12-03/31/12	1.5	4.3	015
06/01/12-06/30/12	1.5	2.8	015
07/01/12-07/31/12	1.5	2	015
08/01/12-08/31/12	1.5	1.8	015
09/01/12-09/30/12	1.5	2.4	015
01/01/09-01/31/09	1.5	1.8	016
03/01/09-03/31/09	1.5	1.8	016
10/01/09-10/31/09	1.5	3.3	016
12/01/09-12/31/09	1.5	4.7	016
01/01/10-01/31/10	1.5	4.9	016
03/01/10-03/31/10	1.5	1.8	016
10/01/10-10/31/10	1.5	2.8	016
12/01/10-12/31/10	1.5	10.2	016
02/01/11-02/28/11	1.5	1.8	016
04/01/11-04/30/11	1.5	2.8	016
05/01/11-05/31/11	1.5	2.8	016
10/01/11-10/31/11	1.5	2.2	016
11/01/11-11/30/11	1.5	2.8	016
12/01/11-12/31/11	1.5	5.0	016
01/01/12-01/31/12	1.5	2.9	016

Iron Violation Date	Maximum Allowed Concentration	Measured Concentration	Outfall/Discharge Point
08/01/10-08/31/10	6	13.1	001
01/01/08-01/31/08	4	4.73	002
05/01/12-05/31/12	7	10.2	004
06/01/12-06/30/12	4.2	6.5	006
07/01/12	4.2	98.6	006
07/02/12	4.2	14.363	006
07/26/12	6	10.322	014
06/01/12-06/30/12	3	3.7	015
03/01/12-03/31/12	3	7.1	015
09/04/12	3	3.86	015
03/01/09-03/31/09	3	3.3	016
10/01/09-10/31/09	3	3.7	016
12/01/09-12/31/09	3	4.9	016
01/01/10-01/31/10	3	7.3	016
10/01/10-10/31/10	3	4.8	016
12/01/10-12/31/10	3	13.2	016
02/01/11-02/28/11	3	3.2	016

04/01/11-04/30/11	3	3.7	016
05/01/11-05/31/11	3	3.2	016
11/01/11-11/30/11	3	5.2	016
12/01/11-12/31/11	3	6.6	016
01/01/12-01/31/12	3	4.0	016
02/01/09-02/28/09	7	18.6	017

Defendants' violations of the Total Iron effluent limitations are likely to continue to occur.

#### Manganese Violations

30. The 2002 NPDES permit contains Manganese average monthly concentration limitations of 1, 1.3, 1.5 or 2 mg/l, depending on the outfall. The maximum monthly concentration of Manganese is 1, 2, 3.0, or 4 mg/l, depending on the outfall. Excessive Manganese in the receiving stream can cause adverse impacts upon aquatic life and/or may degrade a stream's existing use. Emerald violated effluent limitations on the following dates:

Manganese Violation Date	Monthly Average Allowed Concentration	Recorded Monthly Average Concentration	Outfall/Discharge Point
06/01/08-06/30/08	2	2.3	001
11/01/10-11/30/10	2	2.2	001
06/01/12-06/30/12	1.5	6.3	006
07/01/12-07/31/12	1.5	7.8	006
04/01/12-04/30/12	1	1.4	009
05/01/12-05/31/12	1	1.4	009
08/01/12-08/31/12	2	2.3	014
11/01/10-11/30/10	1	3.0	015
06/01/12-06/31/12	1	2.6	015
07/01/12-07/31/12	1	2.4	015
08/01/12-08/31/12	1	2.6	015
09/01/12-09/30/12	1	2.2	015
01/01/09-01/31/09	1	2.2	016
01/01/10-01/31/10	1	1.1	016
08/01/10-08/31/10	1	1.8	016
10/01/10-10/31/10	1	2.2	016
12/01/10-12/31/10	1	2.2	016

05/01/11-05/31/11	1	2.5	016
06/01/11-06/30/11	1	1.4	016
07/01/11-07/31/11	1	1.8	016
08/01/11-08/31/11	1	1.3	016
09/01/11-09/30/11	1	1.9	016
11/01/11-11/30/11	1	2.2	016
12/01/11-12/31/11	1	3.3	016
01/01/12-01/31/12	1	1.8	016
02/01/12-02/29/12	1	2.0	016
Manganese Violation Date	Daily Maximum Allowed Concentration	Recorded Daily Maximum Concentration	Outfall/Discharge Point
06/01/08-06/30/08	4	4.6	001
06/01/12-06/31/12	3.0	6.3	006
07/01/12	3.0	7.19	006
07/02/12	3.0	7.98	006
07/16/12	3.0	8.14	006
04/01/12-04/30/12	1	1.4	009
05/01/12-05/31/12	1	1.4	009
11/01/10-11/30/10	2	3.0	015
06/01/12-06/31/12	2	2.7	015
07/02/12	2	2.474	015
07/16/12	2	2.264	015
08/14/12	2	3.209	015
09/04/12	2	3.82	015
08/01/10-08/31/10	2	2.4	016
10/01/10-10/31/10	2	2.7	016
12/01/10-12/31/10	2	2.3	016
05/01/11-05/31/11	2	2.9	016
07/01/11-07/31/11	2	3.0	016
08/01/11-08/31/11	2	2.3	016
09/01/11-09/30/11	2	2.5	016
11/01/11-11/30/11	2	4.2	016
12/01/11-12/31/11	2	3.6	016
01/01/12-01/31/12	2	3.1	016
02/01/12-02/29/12	2	2.6	016

Defendants' violations of the Manganese effluent limitations are likely to continue to occur.

#### Osmotic Pressure Violations

31. The 2002 NPDES permit contains an Osmotic Pressure average monthly concentration limitation of 50 or 70 mos/kg depending upon the outfall. The maximum monthly

concentration of Osmotic Pressure in the Permit is 100 or 140 mos/kg depending upon the outfall. Excessive Osmotic Pressure in the receiving stream can cause adverse impacts upon aquatic life and/or may degrade a stream's existing use. Emerald violated effluent limitations on the following dates:

Osmotic Pressure Violation Date	Monthly Average Allowed Concentration	Recorded Monthly Average Concentration	Outfall/Discharge Point
04/01/08-04/30/08	70	73.5	002
05/01/08-05/31/08	70	73.5	002
08/01/08-08/31/08	70	79.5	002
09/01/08-09/30/08	70	84.5	002
11/01/08-11/30/08	70	97.0	002
02/01/09-02/28/09	70	92.0	002
03/01/09-03/31/09	70	93.0	002
05/01/09-05/31/09	70	72.0	002
11/01/10-11/30/10	70	102.0	002
01/01/11-01/31/11	70	90.5	002
02/01/11-02/28/11	70	111.0	002
09/01/11-09/30/11	70	76.0	002
04/01/12-04/30/12	70	98	002
04/01/09-04/30/09	50	79.5	013
05/01/09-05/31/09	50	125.5	013
06/01/09-06/30/09	50	121.0	013
07/01/09-07/31/09	50	128.5	013
08/01/09-08/31/09	50	114.0	013
09/01/09-09/30/09	50	112.5	013
10/01/09-10/31/09	50	111.0	013
11/01/09-11/30/09	50	111.0	013
12/01/09-12/31/09	50	111.0	013
01/01/10-01/31/10	50	114.0	013
02/01/10-02/28/10	50	117.5	013
03/01/10-03/31/10	50	133.0	013
04/01/10-04/30/10	50	114.0	013
05/01/10-05/31/10	50	113.5	013
06/01/10-06/30/10	50	116.5	013
07/01/10-07/31/10	50	160.0	013
08/01/10-08/31/10	50	134.0	013
09/01/10-09/30/10	50	124.0	013
10/01/10-10/31/10	50	109.0	013

11/01/10-11/30/10	50	109.5	013
01/01/11-01/31/11	50	100.5	013
02/01/11-02/28/11	50	87.5	013
06/01/11-06/30/11	50	83.5	013
07/01/11-07/31/11	50	84.0	013
08/01/11-08/31/11	50	67.5	013
09/01/11-09/30/11	50	71.0	013
10/01/11-10/31/11	50	95.5	013
11/01/11-11/30/11	50	63.0	013
12/01/11-12/31/11	50	112.0	013
01/01/12-01/31/12	50	120.0	013
02/01/12-02/29/12	50	128.0	013
03/01/12-03/31/12	50	109.5	013
04/01/12-04/30/12	50	114	013
05/01/12-05/31/12	50	129.5	013
06/01/12-06/31/12	50	127.5	013
07/01/12-07/31/12	50	133.7	013
08/01/12-08/31/12	50	114	013
09/01/12-09/30/12	50	102.5	013
06/01/12-06/31/12	50	70	014
12/01/07-12/31/07	50	51.5	016
10/01/08-10/31/08	50	96.0	016
11/01/08-11/30/08	50	147.5	016
12/01/08-12/31/08	50	170.5	016
01/01/09-01/31/09	50	225.0	016
02/01/09-02/28/09	50	112.5	016
03/01/09-03/31/09	50	70.0	016
04/01/09-04/30/09	50	151.0	016
05/01/09-05/31/09	50	145.0	016
06/01/09-06/30/09	50	209.0	016
07/01/09-07/31/09	50	214.5	016
08/01/09-08/31/09	50	209.5	016
09/01/09-09/30/09	50	185.5	016
10/01/09-10/31/09	50	153.5	016
11/01/09-11/30/09	50	207.5	016
12/01/09-12/31/09	50	218.0	016
01/01/10-01/31/10	50	213.0	016
02/01/10-02/28/10	50	210.5	016
03/01/10-03/31/10	50	187.0	016
04/01/10-04/30/10	50	178.0	016
05/01/10-05/31/10	50	212.0	016
06/01/10-06/30/10	50	206.0	016
07/01/10-07/31/10	50	168.0	016
08/01/10-08/31/10	50	196.0	016
09/01/10-09/30/10	50	201.0	016

10/01/10-10/31/10	50	212.5	016
11/01/10-11/30/10	50	197.0	016
12/01/10-12/31/10	50	184.5	016
01/01/11-01/31/11	50	211.5	016
02/01/11-02/28/11	50	232.0	016
03/01/11-03/31/11	50	201.0	016
04/01/11-04/30/11	50	166.0	016
05/01/11-05/31/11	50	206.5	016
06/01/11-06/30/11	50	200.5	016
07/01/11-07/31/11	50	198.5	016
08/01/11-08/31/11	50	185.0	016
09/01/11-09/30/11	50	196.5	016
10/01/11-10/31/11	50	195.0	016
11/01/11-11/30/11	50	181.0	016
12/01/11-12/31/11	50	198.5	016
01/01/12-01/31/12	50	177.5	016
02/01/12-02/29/12	50	201.5	016
03/01/12-03/31/12	50	195.5	016
04/01/12-04/30/12	50	183	016
05/01/12-05/31/12	50	189.5	016
06/01/12-06/31/12	50	168.5	016
07/01/12-07/31/12	50	165.5	016
08/01/12-08/31/12	50	173.5	016
09/01/12-09/30/12	50	188.5	016
Osmotic Pressure Violation Date	Daily Maximum Allowed Concentration	Recorded Daily Maximum Concentration	Outfall/Discharge Point
04/01/09-04/30/09	100	118.0	013
05/01/09-05/31/09	100	170.0	013
06/01/09-06/30/09	100	124.0	013
07/01/09-07/31/09	100	133.0	013
08/01/09-08/31/09	100	118.0	013
09/01/09-09/30/09	100	119.0	013
10/01/09-10/31/09	100	111.0	013
11/01/09-11/30/09	100	111.0	013
12/01/09-12/31/09	100	111.0	013
01/01/10-01/31/10	100	118.0	013
02/01/10-02/28/10	100	118.0	013
03/01/10-03/31/10	100	164.0	013
04/01/10-04/30/10	100	127.0	013
05/01/10-05/31/10	100	121.0	013
06/01/10-06/30/10	100	125.0	013
07/01/10-07/31/10	100	197.0	013
08/01/10-08/31/10	100	135.0	013
09/01/10-09/30/10	100	128.0	013

10/01/10-10/31/10	100	113.0	013
11/01/10-11/30/10	100	112.0	013
01/01/11-01/31/11	100	101.0	013
02/01/11-02/28/11	100	111.0	013
12/01/11-12/31/11	100	112.0	013
01/01/12-01/31/12	100	132.0	013
02/01/12-02/29/12	100	136.0	013
03/01/12-03/31/12	100	114.0	013
04/01/12-04/30/12	100	114	013
05/01/12-05/31/12	100	141	013
06/01/12-06/31/12	100	141	013
07/02/12	100	116	013
07/16/12	100	142	013
07/19/12	100	143	013
08/01/12	100	114	013
08/14/12	100	114	013
09/09/12	100	114	013
11/01/08-11/30/08	100	185.0	016
12/01/08-12/31/08	100	220.0	016
01/01/09-01/31/09	100	240.0	016
02/01/09-02/28/09	100	120.0	016
04/01/09-04/30/09	100	172.0	016
05/01/09-05/31/09	100	197.0	016
06/01/09-06/30/09	100	227.0	016
07/01/09-07/31/09	100	215.0	016
08/01/09-08/31/09	100	223.0	016
09/01/09-09/30/09	100	190.0	016
10/01/09-10/31/09	100	166.0	016
11/01/09-11/30/09	100	210.0	016
12/01/09-12/31/09	100	218.0	016
01/01/10-01/31/10	100	226.0	016
02/01/10-02/28/10	100	211.0	016
03/01/10-03/31/10	100	207.0	016
04/01/10-04/30/10	100	198.0	016
05/01/10-05/31/10	100	222.0	016
06/01/10-06/30/10	100	207.0	016
07/01/10-07/31/10	100	211.0	016
08/01/10-08/31/10	100	201.0	016
09/01/10-09/30/10	100	202.0	016
10/01/10-10/31/10	100	214.5	016
11/01/10-11/30/10	100	219.0	016
12/01/10-12/31/10	100	191.0	016
01/01/11-01/31/11	100	227.0	016
02/01/11-02/28/11	100	234.0	016
03/01/11-03/31/11	100	223.0	016

04/01/11-04/30/11	100	193.0	016
05/01/11-05/31/11	100	214.0	016
06/01/11-06/30/11	100	211.0	016
07/01/11-07/31/11	100	211.0	016
08/01/11-08/31/11	100	198.0	016
09/01/11-09/30/11	100	199.0	016
10/01/11-10/31/11	100	201.0	016
11/01/11-11/30/11	100	183.0	016
12/01/11-12/31/11	100	202.0	016
01/01/12-01/31/12	100	181.0	016
02/01/12-02/29/12	100	206.0	016
03/01/12-03/31/12	100	199.0	016
04/01/12-04/30/12	100	194	016
05/01/12-05/31/12	100	199	016
06/01/12-06/31/12	100	170	016
07/02/12	100	168	016
07/16/12	100	163	016
08/01/12	100	180	016
08/14/12	100	167	016
09/04/12	100	209	016
09/19/12	100	168	016

Defendants' violations of the Osmotic Pressure effluent limitations are likely to continue to occur.

#### Total Suspended Solids Violations

32. The 2002 NPDES permit contains a Total Suspended Solids average monthly concentration limitation of 35 mg/l. The maximum monthly concentration of Total Suspended Solids is 70 mg/l. Excessive Total Suspended Solids in the receiving stream can cause adverse impacts upon aquatic life and/or may degrade a stream's existing use. Emerald violated effluent limitations on the following dates:

TSS Violation Date	Monthly Average Allowed Concentration	Recorded Monthly Average Concentration	Outfall/Discharge Point
02/01/09-02/28/09	35	57	001
08/01/10-08/31/10	35	77	001

12/01/07-12/31/07	35	44	002
01/01/08-01/31/08	35	63.5	002
11/01/08-11/30/08	35	39	002
03/01/09-03/31/09	35	54	002
05/01/09-05/31/09	35	41	002
01/01/10-01/31/10	35	44	002
12/01/10-12/31/10	35	52	002
01/01/11-01/31/11	35	76	002
02/01/11-02/28/11	35	76	002
03/01/11-03/31/11	35	58	002
10/01/11-10/31/11	35	37	002
03/01/11-03/31/11	35	52	006
05/01/12-05/31/12	35	110	006
06/01/12-06/31/12	35	213	006
07/01/12-07/31/12	35	540	006
01/01/08-01/31/08	35	41	014
07/01/12-07/31/12	35	250	014
09/01/12-09/30/12	35	38	014
03/01/12-03/31/12	35	82	015
03/01/09-03/31/09	35	37	016
02/01/10-02/28/10	35	40	016
11/01/10-11/30/10	35	40	016
12/01/10-12/31/10	35	50	016
02/01/11-02/28/11	35	50	016
04/01/11-04/30/11	35	44	016
04/01/12-04/30/12	35	36	016
TSS Violation Date	Daily Maximum Allowed Concentration	Recorded Daily Maximum Concentration	Outfall/Discharge Point
02/01/09-02/28/09	70	90	001
03/01/09-03/31/09	70	72	002
04/01/11-04/30/11	70	76	002
05/01/12-05/31/12	70	189	006
06/01/12-06/31/12	70	213	006
07/01/12	70	908	006
07/02/12	70	513	006
07/16/12	70	200	006
01/01/08-01/31/08	70	81	014
07/26/12	70	250	014
03/01/12-03/31/12	70	119	015
02/01/10-02/28/10	70	78	016

Defendants' violations of the TSS effluent limitations are likely to continue to occur.

### **PH Violations**

33. The 2002 NPDES permit limitation for pH is a range of 6-9. Excessively alkaline pH in the receiving stream can cause adverse impacts upon aquatic life and/or may degrade a stream's existing use. Emerald violated effluent limitations on the following dates:

<b>pH Violation Date</b>	<b>Monthly Allowed Range</b>	<b>Sample Concentration</b>	<b>Outfall/Discharge Point</b>
11/01/11-11/30/11	6-9	9.9	016
11/01/11-11/30/11	6-9	9.1	016
02/01/11-02/28/11	6-9	10.8	016

Defendants' violations of the pH effluent limitations are likely to continue to occur.

### **Settleable Solids Violations**

34. The 2002 NPDES permit contains a Settleable Solids maximum allowed concentration limitation of 0.5 ml/l. Excessive Settleable Solids in the receiving stream can cause adverse impacts upon aquatic life and/or may degrade a stream's existing use. Emerald violated effluent limitations or violated the permit requirement to submit monitoring data on the following dates:

<b>Violation Date</b>	<b>Maximum Allowed Concentration</b>	<b>Sample Concentration</b>	<b>Outfall/Discharge Point</b>
12/01/08-12/31/08	0.5	5.0	004
04/01/12-04/30/12	0.5	No Data	004
05/01/12-05/31/12	0.5	No Data	004
05/01/12-05/31/12	0.5	No Data	012
01/01/10-01/31/10	0.5	0.8	017
04/01/12-04/30/12	0.5	No Data	017
05/01/12-05/31/12	0.5	No Data	017

Defendants' violations of the Settleable Solids effluent limitations are likely to continue to occur.

35. Each Maximum Concentration violation identified in paragraphs 28-34 constitutes a separate violation of the Clean Water Act.

36. Each Average Concentration violation identified in paragraphs 28-34 constitutes a separate violation of the Clean Water Act for each day of the month in which the violation occurs.

37. The Clean Water Act authorizes civil penalties of up to thirty-seven thousand five hundred dollars (\$37,500) per violation for violations occurring since January 12, 2009, and thirty-two thousand five hundred dollars (\$32,500) per violation for violations identified in this Complaint which occurred earlier in time.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

- a) Declare, pursuant to 28 U.S.C. § 2201, that Defendants are in violation of the Clean Water Act;
- b) Enjoin Defendants from further violating the Clean Water Act;
- c) Order Defendants to assess and mitigate the environmental injuries caused by their illegal discharges;
- d) Assess significant civil penalties against Defendants for each violation of the Clean Water Act;
- e) Award the Plaintiff the cost of litigation, including reasonable attorney's fees, costs, and expert fees and expenses; and
- f) Grant such additional relief as justice may require.

Respectfully submitted,

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Attorney for Citizens Coal Council

Dated: January 2, 2013